

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 416 of 1997

in

SPECIAL CIVIL APPLICATION No 2950 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
 2. To be referred to the Reporter or not? No
 3. Whether Their Lordships wish to see the fair copy of the judgement? No
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
 5. Whether it is to be circulated to the Civil Judge? No
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BAJAJ ELECTRICALS LTD

Versus

STATE OF GUJARAT

Appearance:

MR RN SHAH for Petitioner
SERVED for Respondent No. 1
SERVED BY RPAD for Respondent No. 5

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE S.D.PANDIT

Date of decision: 18/06/97

This appeal is directed against an order passed by the learned single Judge summarily dismissing Special Civil Application No. 2950 of 1995 on March 22, 1996. The order of the learned single Judge reads as under:

"Heard the learned Advocate for the parties. I find no infirmity in the order. Hence, this Special Civil Application is rejected. Notice discharged."

The appellant is the original petitioner. He filed a petition for an appropriate writ, direction or order quashing and setting aside orders at Annexures.E and G. By the first order, dated December 5, 1992 (Annexure.E), the Additional Collector & Controller of Food and Civil Supplies, Ahmedabad City, Ahmedabad ordered confiscation of goods on the ground that there was violation of the provisions of General Service Electric Lamps (Quality Control) Order 1989 (hereinafter referred to as "the Order"), issued under section 3 of the Essential Commodities Act. By Annexure. 'G' an appeal filed by the appellant was dismissed. The ground for confiscation of goods was that the bulb of 15 wattage manufactured by Bajaj Company and sold by the appellant did not have ISI marking.

2. Mr. R.N. Shah, learned counsel for the appellant raised three contentions. (1) The provisions of 1989 Order do not apply to the commodity in question and ISI marking is not necessary;(2) When no action is taken against manufacturer, the appellant who is merely a dealer in bulbs could not have been held liable and no order of confiscation could have been passed against him. (3) The impugned action is arbitrary, discriminatory and violative of Article 14 of the Constitution of India inasmuch as similar bulbs though manufactured by other companies viz. Philips, Cema and Surya, no action has been taken against them.

3. In letters Patent Appeal, the Division Bench issued notice. It was mentioned therein that the respondent authorities will explain the position of the appellant qua companies whose names have been mentioned in para 5 of the Letters Patent Appeal.

4. Today, we have heard Mr. Shah learned counsel for the appellant as also Ms. Gajjar, Assistant Government Pleader for the respondents. Ms. Gajjar stated that so far as the provisions of Control Order of

1989 are concerned, they apply to commodity in question and orders passed are in consonance with law. Regarding non taking of action against manufacturer it was submitted that the appellant who is dealing in such commodity has no right to make grievance that as no action is taken against manufacturer, authority cannot take action against him. About breach of Article 14 of the Constitution of India, she submitted that Mr. R.R.Patel, Assistant Electrical Inspector (Quality Control) had instructed through his Assistant Mr. J.N.Patel, Electrical Inspector who is present in the court, that so far as "Philips" is concerned, appropriate proceedings have been taken and notice has been issued. Regarding Laxman Sylvania, Cema and Surya, she stated that if they have violated provision of law, appropriate proceedings will be taken against those companies also. The appellant, however, cannot claim immunity on that ground.

5. In our opinion the Letters Patent Appeal deserves to be dismissed. So far as the provisions of law are concerned, ISI marking is necessary. Looking to the definition clause, more particularly sub-clause (d) of clause 2 of the Order it clearly appears that the provision would apply when a bulb is used for "general lighting purposes" Reading clause 1.1 of the Indian Standard Specification for Tungsten Filament General Service Electric Lamps (IS:418-1978), the standard applies to ordinary incandescent lamps for general lighting purpose having

- a) a nominal life of 1000 hours;
- b) a rated wattage of 15 to 1500 watts,inclusive.
- c) a rated voltage of 110,230,240 and 250 volts;
- d) bulbs clear or internally frosted; and
- e) caps, normal bayonet or Edison screw as set out in Appendix.A.

Appendix A which is referred to in clause 1.1 states

Characteristics of Standard Filament Lamps for
General Lighting purposes
(To which this specification applies)

A.1 Rated voltage, wattage, cap designation and bulb finish of lamps for, general lighting purpose are given below:

Rating	Cap	Bulb finish
Voltage	Wattage	

(V)	(W)		
110,230	15		
240 and 250	25		
	40		
	60	B22	
	75	or	
	100	E37	Inside
			frosted
	150		or clear
	200		
	300	B22,E27 or	
		E40	
	500		
	1000	E40	clear
	1500		

Thus, 15 wattage bulb requires certification. The specification also refers " Inside frosted or clear" For such bulbs, marking is necessary.

6. Our attention was invited by Mr. Shah to Indian Standard Glass Shells for General Lighting Service Lamps-Specification IS 1112 (Part) 1989. Clause 1.1 thereof reads as under:

" This standard prescribes the requirements and the methods of sampling and test for pear-shaped and mushroom shaped glass shells for general lighting service lamps of bulb diameters not less than 600 mm and not more than 80 mm"

Ms. Gajjar, in our opinion, however, is right in submitting that this standard is not for bulb but for glass shells which is of different quality altogether. In the circumstances, in our opinion, the contention of Mr. Shah does not help the appellant.

7. Mr. Shah also relied upon one certificate annexed to the petition (Annexure H) which reads as under:

"As per the Clause No. 3.1 and Appendix 'B' of IS:418:1978 and Clause Nos. 1.1 and 4.1.1.1 of IS:1112 (Pt. 1) 1989, the Tungston Filament General Service Electric Lamps of 15 W of Diameter between 59 and 62mm are only covered"

Another certificate which was not produced at the time when the Special Civil Application was filed, was produced today. It is issued by the Dy. Director of Bureau of Indian Standards. Annexure.H refers to some

query raised by the appellant by his letter dated June 3, 1993 and it was mentioned in Annexure H that as per clause No. 3.1 and Appendix B, the Tungston Filament General Service Electric Lamps of 15 W of diameter between 59 and 66 mm are only covered. The second letter is the reply to the letter written by M/s Prakash Lamp Mfg. Co. on May 6, 1997 copy of which has been forwarded to the appellant by the said M/s Prakash Lamp Mfg. Co. In the second letter, it is stated that GLS lamp 05 to 250v of 15w to 45mm dia. are neither covered by Indian Standard nor General Lighting Service Lamps.

8. In our opinion, when Control Order is issued by the Government in exercise of delegated powers under the Essential Commodities Act 1955, which requires ISI marking, such marking is necessary. Obviously, the appellant has to comply with the said requirement and it cannot make grievance that in pursuance of some certificate, statutory requirement prescribed by the Control Order need not be complied with. Moreover, it appears that even the appellant also was conscious of this position that ISI marking was necessary in "clear" and "inside frosted bulbs" and that is why all through out the case of the appellant was that the bulbs sold by him were deemed to be "decorative" or "light bulbs". This is clear from the order impugned in the petition in which such an argument was advanced. It is also clear from communication at Annexure. I dated April 18, 1991 produced by the appellant himself. It states, " As regards your query, we clarify that ISI No. 418-1978 does not cover lamps with 45 mm shell. In our case 15 W shell. Hence these lamps are not marked with "ISI" making. They are "Special Lamps" and not GLS covered under ISI No. 418-1978".

9. Thus, the case of the appellant was that since bulbs manufactured by Bajaj company and sold by the appellant were decorative or lighting lamps, they fell within the category of "special lamps" and, therefore, they did not require such certificate. Said contention was negatived by the competent authority as well as by the appellate authority. We cannot reappreciate the fact and come to a conclusion that it is either unwarranted, erroneous or without any evidence.

10. If that be the position, the authorities were right in holding that such marking was necessary and it is an admitted fact that such marking was not there and hence it cannot be said that the orders are unreasonable and violative of article 14 of the Constitution of India as stated by the appellant. A statement is made on behalf

of the respondents that action has been taken against other companies also. If they are not fulfilling requirements laid down in Control Order, they will be dealt with in accordance with law. It cannot therefore, be said that article 14 is violated. Moreover, it is well settled that if any illegality has been committed in one case, such an illegality cannot be allowed to be continued by invoking article 14 of the Constitution. This is not the sweep of article 14 of the Constitution of India.

11. For the foregoing reasons, we do not see any substance in this appeal and the appeal deserves to be dismissed and accordingly dismissed. Notice discharged. No order as to costs.

(C.K.Thakker.J)

(S.D.Pandit.J)